IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.MC.No. 3100 of 2007()

CC.971/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA
(RENUMBERED AS C.C.353/07)

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PETITIONER: 4TH ACCUSED:

RIYAS, S/O.SAINUDEEN,
MUNDU VILAKOM VEEDU,
NEAR PAKISTAN MUKKU, VAKKOM DESOM,
VAKKOM VILLAGE.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENTS: COMPLAINANT AND STATE:

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1. SUB-INSPECTOR OF POLICE,
KADAKKAVUR POLICE STATION, THIRUVANANTHAPURAM
DISTRICT.

2. STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3100 of 2007

Dated this the 9th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution for the offence punishable under Section 394 I.P.C. Altogether there were 4 accused persons originally. The petitioner was the 4th accused. Accused 1 and 2 faced trial, whereas accused 3 and 4 were not available for trial. Accused 1 and 2 were found not guilty and acquitted. The case against accused 3 and 4 was split up and refiled as C.C.353 of 2007. Coervice processes have been issued against the petitioner. The petitioner apprehends imminent arrest in execution of such processes issued.

2. At the stage of arguments, the learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful. He is willing to surrender before the learned Magistrate and seek regular bail. But the apprehension of the petitioner is that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The petitioner has a further submission that the petitioner has settled the dispute with the defacto complainant and the

defacto complainant is willing to report such settlement/composition. The offence alleged is, of course, not compoundable. Therefore it is prayed that appropriate directions under Section 482 Cr.P.C may be issued in his favour.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed. But with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-